Decision **ALTERNATE DRAFT DECISION OF COMMISSIONER BROWN**
(Mailed 2/7/02)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking Regarding the Implementation of the Suspension of Direct Access Pursuant to Assembly Bill 1X and Decision 01-09-060.	Rulemaking 02-01-011 (Filed January 9, 2002)

(See Appendix C for List of Appearances)

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OPINION REJECTING AN EARLIER DATE THAN SEPTEMBER 20, 2001, FOR THE SUSPENSION OF DIRECT ACCESS, AND IMPLEMENTING THE SUSPENSION, AS ADOPTED IN DECISION (D.) 01-09-060, AS MODIFIED BY D.01-10-036

I. Summary and Background

In 1995, this Commission issued a comprehensive decision for electric restructuring, which included the adoption and implementation of a direct access program. (Re Proposed Policies Governing Restructuring California's Electric Services Industry and Reforming Regulation [Decision (D.) 95-12-063, as modified by D.96-01-009] (1995) 64 Cal. P.U.C.2d 1, 24 (Preferred Policy Decision).) The Legislature codified the Preferred Policy Decision in Assembly Bill No. 1890, Stats. 1996, ch. 854 (AB 1890).

By "direct access" California customers are permitted to choose from whom they wished to purchase their electricity. Customers could subscribe to bundled service from the public utility or direct access service from an electric service provider (ESP). Customers who purchase bundled service from the utility pay an electricity charge to cover the utility's power supply costs. For those bundled service customers, their total bundled bill includes charges for all utility services, including distribution and transmission as well as electricity. A direct access customer receives distribution and transmission service from the utility, but purchases electricity from its ESP. (See D.01-09-060, p. 2.)

Recently, major events in the California electric market have caused a significant change in the area of direct access. On January 17, 2001, the Governor issued a proclamation declaring that an emergency existed in the electricity market in California, and stating that "the solvency of California's major public utilities" was threatened. In response to this emergency, the Legislature enacted

Assembly Bill No. 1X (AB 1X) , AB 1Xwhich, among other things, required that the California Department of Water Resources (DWR) procure electricity on behalf of the customers of the California utilities. (Stats. 2001 (1st Extraordinary Sess.), ch. 4.) With respect to direct access, AB 1X added Water Code §80110,[1] which provides:

> "After the passage of such period of time after the effective date of this section as shall be determined by the commission, the right of retail end use customers pursuant to Article 6 (commencing with Section 360) of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code to acquire service from other providers shall be suspended until the department [the Department of Water Resources] no longer supplies power hereunder." (Water Code, §80110 see also, AB 1XStats. 2001 (1st Extraordinary Sess.), ch. 4, § 4, p. 10.)

AB 1X was an urgency statute and was given effect as of February 1, 2001. The statute was necessary "to address the rapid, unforeseen shortage of electric power and energy available in the state and rapid and substantial increases in wholesale energy costs and retail energy rates, that endanger the health, welfare, and safety of the people of [California]." (AB 1XStats. 2001 (1st Extraordinary Sess.), ch. 4, §7, p. 16.)

In compliance with the mandate concerning direct access in AB 1X, we issued D.01-09-060, an interim order, effective September 20, 2001, which suspended the right to enter into new contracts or agreements for direct access after September 20, 2001. We reserved for subsequent consideration matters related to the effect to be given to contracts executed or agreements entered into

[1] All Water Code sections cited in this decision are collected in Appendix B.

on or before the effective date. We especially put all parties on notice "that we may modify this order to include the suspension of all direct access contracts executed or agreements entered into on or after July 1, 2001." (D.01-09-060, pp. 8-9.) We acted promptly in issuing D.01-09-060 to prevent the adverse cost-shifting impacts on bundled service customers caused by customers switching to direct access. (D.01-09-060, pp. 8-10.) Also, D.01-09-060 was issued to facilitate the transactions of the State of California, in the issuance of bonds at investment grade necessary to ensure the repayment of the expenditures made from the State's General Fund to procure power for the utilities' customers. These expenditures were made to help weather the energy crisis confronting all retail end users statewide. (D.01-09-060, pp. 4 & 8; see also, Water Code, §80000.)

In D.01-09-060, we specifically reserved for a subsequent decision any issues related to an earlier suspension date. As we said: "All other pending issues concerning direct access contracts or agreements executed before today remain under consideration by the Commission and will be resolved in a subsequent decision." (D.01-09-060, pp. 8, 9.) We concluded that "[t]he effect to be given to contracts executed, agreements entered into or arrangements made for direct access [on or] before [September 20, 2001], including renewals of such contracts, as well as comments of the parties will be addressed in a subsequent decision." (D.01-09-060, p. 10 [Conclusion of Law 4] & p. 13 [Ordering Paragraph 9].)

In D.01-09-060, we recognized that merely suspending direct access was not enough. Many issues remained.

> "All other pending issues concerning direct access contracts or agreements executed before today remain under consideration by the Commission and will be resolved in a subsequent decision. In other words,

> effective today, no new contracts or agreements for direct access service may be signed; the effect to be given to contracts executed or agreements entered into before the effective date of this order, including renewals of such contracts or agreements, will be addressed in a subsequent decision. We put all those concerned about these matters on notice that we may modify this order to include the suspension of all direct access contracts executed or agreements entered into on or after July 1, 2001. Parties' comments regarding retroactive suspension, including the July 1, 2001 date, will be addressed by a subsequent decision." (D.01-09-060, pp 8-9.)

In D.01-10-036, our order denying rehearing, we modified D.01-09-060 for purposes of clarification and added the following language:

> "D.01-09-060 is modified to add the following clarifying language between lines 11 and 12 on page 8 of D.01-09-060:
>
> We are aware that some parties have asked for us to hold hearings on the timing of the suspension of direct access. We have carefully reviewed the comments filed by various parties on this point and are not convinced that any party has identified any material factual issue that requires an evidentiary hearing. Thus, we do not intend to hold evidentiary hearings, especially as we are simply implementing a clearly worded statute that directs the Commission to suspend direct access. Further, we see no need to hold evidentiary hearings at this time, especially in the light of the important need to implement the Legislature's directives to suspend direct access, under the circumstances described above, and in the manner we did in today's interim order." (D.01-10-036, pp. 23-24.)

Following our directive the Presiding Administrative Law Judge (ALJ) set a prehearing conference on November 7, 2001, "to clarify the issues remaining to be resolved. . . ." (ALJ Ruling of October 11, 2001.) On October 23, 2001, an Assigned Commissioner's Ruling was issued by Commissioner Wood requesting written comments on various issues, including whether the Commission should consider a July 1, 2001, suspension date. At the prehearing conference of November 7, these matters were considered with particular emphasis on the issue of suspending direct access on a date prior to September 20, 2001.

On November 11, 2001, the Presiding ALJ issued a Ruling stating that:

> "Proposals to implement the Commission's September 20 Order (D.01-09-060) will be filed by the utilities on November 16, 2001; all parties may comment on or before November 28; all parties may respond to comments on or before December 4.
>
> A prehearing conference to consider the implementation proposals, and issues regarding PX credits, will be held December 12, 2001 at 2 p.m. in the Commission Courtroom, State Office Building, 505 Van Ness Avenue, San Francisco, California."

On November 19, 2001, an Assigned Commissioner's Ruling stated that parties could file supplemental comments on January 4, 2002, to the comments filed in response to the Assigned Commissioner's Ruling of October 23, 2001.

At the prehearing conference on December 12, 2001, the matter of implementation of the order suspending direct access was submitted, subject to supplemental comments to be filed on January 4, 2002. (Tr. p. 133.)

> "The issues of implementation of the Commission's order suspending Direct Access (Decision 01-09-060) and whether to choose a date earlier than September 20, 2001

> for the suspension to go into effect are submitted as of January 4, 2002, the date for filing supplemental comments."

Supplemental comments were filed on January 4, 2002.

On January 14, 2002, we issued the instant rulemaking, Order Instituting Rulemaking (R.) 02-01-011. This rulemaking was issued to consider the pending issues regarding direct access, including those issues concerning an earlier suspension date, the provisions in contracts or arrangements entered into prior to September 21, 2001 involving renewals, assignments, transfers, and / or add-ons, and other implementation issues concerning the suspension of direct access. (R. 01-02-011, pp. 4-5.) These issues had been pending in the proceedings involving Application (A.) 98-07-003, A.98-07-006 and A.98-07-026 (A.98-07-003, et al.) This proceeding had also involved issues concerning the PX credit. As a matter of efficiency, we decided to keep the record for the direct access suspension separate from the PX credit issues, and thus, issued this instant rulemaking. (R.02-01-011, p. 5.) The administrative record relating to these specific issues in A. 98-07-003, et al. has been incorporated into this rulemaking by judicial notice. (R.01-02-011, p. 5.) Judicial notice has also been taken of specific information in the DWR Revenue Allocation Proceeding A.00-11-038, et al.), in particular those involving the magnitude of costs incurred by DWR on behalf of customers of the California utilities during the energy crisis. (See Letter of January 25, 2002, to the parties that accompanied the Draft Decision of ALJ Barnett). Comments were filed on the Draft Decision of ALJ Barnett and Alternate Draft Decision of Commissioner Brown on February 14, 2002. The administrative record for this rulemaking has been developed through notice and comment.

II. The Effective Date of Suspension

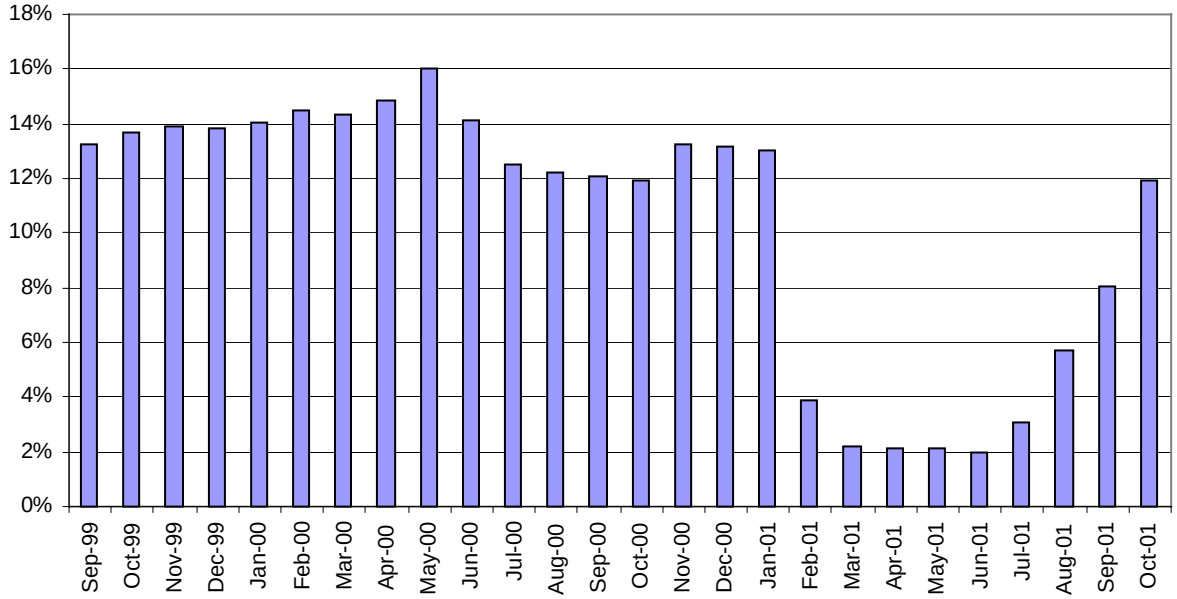
For the reasons set forth below, we find that the direct access suspension date should remain September 20, 2001. Direct access contracts executed prior to September 20, 2001, are not suspended, but are subject to the implementation restrictions imposed by this decision.

A. Facts

DWR has been buying electricity on behalf of the retail end use customers of the California utilities (Southern California Edison Company (SCE), Pacific Gas and Electric Company (PG&E) since January 17, 2001, and San Diego Gas & Electric Company (SDG&E) since February 7, 2001. It has spent over $10 billion to date and is estimated to spend an additional $8 billion through December 31, 2002. DWR has entered into long-term contracts with various generators to supply electricity to the customers of the three utilities.

TABLE 1

Direct Access as Percentage of Total Load
September 1999 Through October 2001



All DWR purchases to date, including interest, plus the cost of future purchases under the long-term contracts and on the spot market, are the obligations of the ratepayers of the three utilities.[2] These purchases also included those made by DWR on behalf of direct access customers who returned to bundled service and those bundled service customers who later entered into direct access contracts or arrangements. These purchases were necessary to keep the lights on so as to alleviate the "immediate peril to the health, safety, life and property of the inhabitants of the state. . . ." (See Water Code, §80000; see also, PG&E's Reply Comments, dated November 8, 2001, p. 1.) Between July 1, 2001 and September 20, 2001, approximately 11% of the total electric load of the utilities has shifted from bundled service to direct access service. As Table 1 shows, by comparison, between September 1999 and January 2001, direct access levels hovered between 12% and 16% of total electric load before dropping to about 2% by June 2001. Thus, by September 2001, direct access service was still slightly below earlier levels. Nevertheless, this shift means that some percentage of the DWR revenue requirement will become the obligation of the remaining bundled customers of the utilities should direct access suspension remain fixed at September 20, unless the Commission implements direct access surcharges or exit fees , on direct access customers that allocate certain DWR costs to them.

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[2] Water Code § 80104:

Upon the delivery of power to them, the retail end use customers shall be deemed to have purchased that power from the department. Payment for any sale shall be a direct obligation of the retail end use customer to the department.

This cost-shift potential is the major argument TURN, SCE and others make in calling for a retroactive suspension date.

On November 5, 2001, DWR submitted to the Commission its revenue requirement of $10,003,461,000[3] representing the amount to be allocated by the Commission among the three major California utilities covering the period January 17, 2001 through December 31, 2002. On February 21, 2002, DWR submitted a letter identifying several adjustments which could be made to its revenue requirement.. (See D.02-02-052, p. 3.)[4] We concluded that these adjustments could be made and revised DWR's revenue requirement. in our recent DWR Revenue Requirement Decision [D.02-02-052], pp. 2-3. Also, in this decision, we determined that DWR will collect its revenue requirement through charges remitted from billings to retail customers in the service territory of the three major electric utilities based on cents per-kWh charges. (DWR Revenue Requirement Decision [D.02-02-052], p. 2.)Although the direct access suspension date has no bearing on whether DWR will receive all of its revenue requirement, there is a question of which end user customers will pay, so that the costs incurred by DWR in response to the energy crisis confronting California will be recovered. More importantly, the question is how the Commission will prevent cost-shifting of a significant magnitude.

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[3] Water Code Section 80110 authorizes DWR to determine its revenue requirement. This Commission makes no independent judgment concerning the reasonableness of the DWR revenue requirement.

[4] The revisions reflect DWR's responses to comments submitted by the parties in A.00-11-038, et.al., and reflect corrections to mathematical errors and calculations in DWR's prior submittals. (D.02-02-052, p. 2.)

In their comments, TURN, DWR and the State Treasurer support an earlier suspension date of July 1, 2001, to alleviate this serious concern of cost-shifting. (See TURN's Comments, dated November 2, 2001, pp. 1-2; TURN's Comments, dated December 4, 2001, p, 1; State Treasurer's Letter, dated November 2, 2001, pp. 1; DWR's Comments (as a nonparty), dated November 2, 2001, p. 3.)

However, other participants in this proceeding have proposed or supported a nonbypassable direct access surcharge or an exit fee, as an alternative to an earlier suspension. (See e.g. California Manufacturers & Technolgy Association amd California Large Energy Consumers Association's (CMTA / CLECA's) Joint Motion of for Leave to File a Supplemental Proposal, dated December 10, 2001, p. 5; ORA's Comments, dated January 4, 2002, pp. 2-3; SCE's Comments, dated January 4, 2002, p. 7; CMTA / CLECA's Supplemental Comments, dated January 4, 2002, p. 6; PG&E's Coments, dated January 4, 2002, p, 6; Sempra Energy Solutions, dated January 4, 2002, pp. 6; PG&E's Reply Comments, dated November 8, 2001, p. 3; Jack-In-the-Box's Comments, dated November 2, 2001, p. 10; PG&E's Comments, dated November 2, 2001, pp. 3-7; CLECA's Comments, dated November 2, 2001, pp. 2-3.[5] (A.98-07-003, et al.)

On December 10, 2001 a "Motion of the California Manufacturers & Technology Association, California Large Energy Consumers Association, for Leave to File a Supplemental Proposal" (CMTA / CLECA Proposal) was filed. The CMTA / CLECA proposal is that the Commission should grandfather those customers (or their accounts) who had signed direct access contracts as of

[5] We make no findings in this proceeding concerning specific dollar amounts that may be appropriate to be recovered in exit fees.

September 20, 2001 and whose names appear on the UDC's direct access DASR lists of October 5. The CMTA / CLECA proposal also states that "in the absence of retroactive suspension, the issue of responsibility of direct access customers for payment of utility and DWR procurement costs must be addressed promptly and fully." We agree that the Commission should consider the questions of direct access timing issues and exit fees in an integrated manner.

ORA argues that backbilling customers for DWR costs (e.g., exit fees) may be an effective way for the Commission to mitigate the cost-shifting that would otherwise occur. ORA provides some guidance concerning how an equitable exit fee would be calculated, with an assumption that otherwise about $700 million of DWR costs could be shifted to bundled customers (based on a 10% revenue in total IOU load going to direct access between July 1 and September 20, 2001)[6]. PG&E and others agree that a reasonable non-bypassable charge is the least intrusive way to deal with the cost-shifting that would occur if direct access customers are not returned to bundled service.

On December 24, 2001 the question of cost responsibility of direct access customers for DWR revenue requirements (e.g., exit fees) was transferred from this docket to the Rate Stabilization docket. A Prehearing Conference on this topic is scheduled for February 22, 2002. We will determine the level of exit fees to be imposed in that proceeding. At this time we will state that exit fees or

[6] We make no findings in this proceeding concerning specific dollar amounts that may be appropriate to be recovered in exit fees.

similar charges should be imposed,[7] and it is our intent that such fees or charges be fully compensable so that direct access customers pay their fair share of DWR costs.

B. Discussion

Today, we will not adopt an earlier suspension date for direct access. In lieu of an earlier suspension date, we determine that it is appropriate to consider the adoption of a direct acess surcharge or exit fee. We explain our reasoning below.

ORA, Alliance for Retail Energy Markets & Western Power Trading Forum (collectively, AreM), CIU, CMTA/CLECA, and others argue against changing the suspension date of direct access from after September 20, 2001, to July 1, 2001. The arguments fall into two broad categories: 1) customers have executed contracts with ESPs in reliance on our September 20 date, and 2) changing the suspension date to July 1, 2001 is an impairment of contracts entered into between July 1 and September 20. These and other policy arguments are discussed below.

1. Reliance & Other Policy Reasons

AReM, CMTA/CLECA, ORA, and others argue that because the Commission never acted formally to suspend direct access until September 20, 2001, the Commission allowed the direct access program to remain effective and, accordingly, customers continued to execute direct access contracts up until

[7] In A.98-07-003, et. al., the Commission will also determine whether direct access customers who did not take bundled service between January 17, 2001 and September 20, 2001 may be exempt from exit fees.

September 20, 2001. Thus, those customers who executed direct access contracts during this period were doing exactly what the Commission allowed them to do.

As a matter of public policy, they believe it is critical that the Commission adhere to a stable set of rules which affect customers, ESPs, and the utilities. They claim it would be extremely disruptive at this juncture for the Commission to attempt to establish a direct access suspension date earlier than September 20, 2001. Customers have bargained for their direct access contracts and if those contracts were to be nullified by establishing an earlier suspension date, customers would lose the benefit of their bargain, primarily in the form of lower electric costs.

We find these arguments persuasive. As several parties point out, the Commission has an obligation to employ regulatory consistency in its decisions. Consumers, regulated utilities and the economy as a whole benefit when the Commission maintains a regular and consistent regulatory program, as this provides the predictability necessary to plan investment and budgetary decisions. Direct access has existed in concept since 1995 and in practice since 1998. The suspension date of September 20, 2001 was adopted on a forward-going basis, allowing predictability for the future. The continuing uncertainty surrounding an earlier suspension should be resolved at this time. Regulatory consistency clearly calls for maintaining the date chosen in D.01-09-060, as modified by D.01-10-035.

Further, ORA, CMTA/CLECA, AReM and others raise other policy arguments against an earlier suspension of direct access. We find these policy arguments convincing for the reasons discussed below.

AReM and others contend that an earlier suspension will negatively affect California businesses, and thus, affect the California economy. With increased

electricity costs resulting from an earlier suspension, California's economy may suffer if from firms relocate or choose not to enter the state. Further, as University of California & California State Universities (collectively, UC/CSU) and the Los Angeles Unified School District (LAUSD) point out, such increased costs also affect important state functions, such as the delivery of quality education. In addition, ORA points out that choosing an earlier suspension date of July 1 could well have long term detrimental consequences to existing bundled ratepayers if, for example, spot market prices spike in the summer of 2002 and this "new" returning load to bundled service incrementally increases the average for bundled ratepayers. Further, ORA states "direct access is a means of diversifying the California electric power market, and therefore helps to protect California against uncertainty." Moreover CMTA/CLECA notes that the growth of direct access load in summer 2001 contributed substantially to a $2.6 billion reduction in the level of the DWR revenue requirement estimate for the period through December 31, 2002. We agree with ORA and CMTA/CLECA that there are significant risks associated with an earlier suspension date as well as benefits associated with retaining a viable direct access market.

We are also persuaded by arguments by ORA and others for a direct access surcharge or an exit fee as a means to a legally simpler and more equitable solution to the cost-shifting problem. For example, ORA provides a convincing argument that assessing direct access customers for DWR costs (exit fees) may be an effective way for the Commission to mitigate the cost-shifting, and discusses how an equitable exit fee might be calculated. (See ORA's Comments, dated January 4, 2002, pp. 2-3.)

For all of these reasons, we find that California is better served by maintaining the September 20, 2001 direct access suspension date and

considering a direct access surcharge or exit fee, in lieu of an earlier suspension date, to recover DWR costs from direct access customers. Based on the comments, we believe that such a surcharge or exit fee is a viable option and a more moderate alternative to an earlier suspension.

Although a few parties have offered some suggestions as to how an equitable surcharge or fee might be calculated (see, e.g., ORA's Comments, dated January 4, 2002; PG&E's Comments, dated November 2, 2001, pp. 3-7), we do not address any issues concerning such a calculation in this decision today. (See generally,; TURN's Comments, dated November 2, 2002, pp. 4-7.) We have reserved this question of cost responsibility of direct access customers for the DWR revenue requirements (direct access surcharges or exit fees) for future consideration. We note that the issue was transferred from this docket to the Rate Stabilization docket. A.00-11-038, et al. A prehearing conference on this topic was held on February 22, 2002 on this issue. (See Prehearing Conference Transcript, February 22, 2002, ; see also, Joint ALJs' Ruling, dated December 24, 2001, p. 2.)

We emphasize that the direct access surcharges or exit fees to be developed shall alleviate any significant cost-shifting. The surcharges or exit fees should not result in bundled customers paying more DWR costs than they would have if direct access had been suspended as of July 1, 2001.

2. Impairment of Contracts

We remain unconvinced that the constitutional restriction against impairment of contracts has no bearing here. If the Contract Clause lacks the robustness it exhibited prior to the enactment of the 14th Amendment, it is nonetheless not a dead letter. Even in the exercise of otherwise legitimate police power, the Contract Clause imposes *some* limits upon the power of the State to

abrogate existing contracts. "[T]hat power has limits when its exercise effects substantial modifications of private contracts." *Allied Structural Steel Co v. Spannaus* (1978), 438 U.S. 234, 244.

The existence and nature of those limits are denoted by a series of United States Supreme Court cases. In *United States Trust Co. v. New Jersey* (1977) 431 U.S. 1 , a New Jersey law that altered the rights and remedies of Port Authority bondholders was held invalid under the Contract Clause because it was neither necessary nor reasonable. "Legislation adjusting the rights and responsibilities of contracting parties must be upon reasonable conditions and of a character appropriate to the public purpose justifying its adoption." (*Id.*, at p. 22.) While scrutinizing a contract to which the State itself was party, the Court was careful to add that "private contracts are not subject to unlimited modification under the police power." (Id.)

In *Allied Structural Steel Co v. Spannaus* supra, 438 U.S. 234, the Court held invalid under the Contract Clause a Minnesota law that retroactively modified a pension vesting requirement. There was no record showing that such a severe impairment was necessary to meet an important general social problem. (Id., at p. 247.) A severe impairment, the Court explained, "push[ed] the inquiry to a careful examination of the nature and purpose of state legislation." (Id., p. at 245.)

By the same token, a state must possess broad power to adopt general regulatory measures without being concerned that private contracts will be impaired, or even destroyed, as a result. Otherwise, one would be able to obtain immunity from state regulation by making private contractual arrangements. This principle is summarized in Mr. Justice Holmes' well-known dictum: "One whose rights, such as they are, are subject to state restriction,

cannot remove them from the power of the State by making a contract about them." Hudson Water Co. v. McCarter(1908) 209 U.S. 349, 357 .

Yet private contracts are not subject to unlimited modification under the police power. In Home Bldg. & Loan Ass'n. v Blaisdell(1934) 290 U.S. 398 , the United States Supreme Court recognized that laws intended to regulate existing contractual relationships must serve a legitimate public purpose. A State could not "adopt as its policy the repudiation of debts or the destruction of contracts or the denial of means to enforce them." (Id. at p. 439.) Legislation adjusting the rights and responsibilities of contracting parties must be upon reasonable conditions and of a character appropriate to the public purpose justifying its adoption. (Id. at p. 445-447.) As is customary in reviewing economic and social regulation, however, courts properly defer to legislative judgment as to the necessity and reasonableness of a particular measure. East New York Savings Bank v. Hahn (1945) 326 U.S. 230 .

Here, retroactive suspension of the direct access contracts between private parties is of some duration. While it is clear that the enabling legislation under which the Commission seeks to proceed came out of an undeniable and potentially pervasive emergency, it is also true that, with respect to suspension, no inference that the Legislature wanted retroactive application of the powers it conferred on the Commission is readily apparent from the language of AB 1X or from its legislative history.

Rendering private contracts void retrospectively is, by its nature, a drastic and severe undertaking that, as a matter of administrative prudence and sound public policy, should not be undertaken lightly. Similarly, when other less stringent options are available, retrospective voiding of private contracts should be undertaken with extreme reluctance. In a situation where direct access

surcharges or exit fees are a viable option for sharing the burden among all affected while at the same time less drastically affecting private contracts, such a vehicle seems eminently appropriate.

It is true that even a prospective suspension of direct access, if it in any way affects preexisting contracts, has the effect of altering some of the terms of those contracts. Contractual provisions for add-ons (additional accounts, new accounts, new meters, new locations) and other terms of direct access contracts are clearly impeded by the prospective suspension undertaken here. While undoubtedly, such prohibitions will be seen by some as an impairment of one's unfettered right of contract, such provisions are not an unlawful impairment of one's right to contract. Such prohibitions flow logically from the Legislature's clear intent to restrict significant cost-shifting from direct access customers to bundled service ratepayers and the "standstill" concept inherent in its delegation to the Commission. More significantly, were we to permit under the rubric of "impairment of contract" all prospective contracts to be immune from regulation we would invite massive avoidance of sharing the costs incurred by the DWR for the benefit of utility users. If add-ons were to be permitted, one needn't deal in much conjecture to contemplate open-ended contracts, with manifest flexibility of terms that would be the direct access exception that swallowed the rule, rendering the AB1X statutory scheme ineffectual and inequitable. A diminution of the base of bundled service ratepayers would result in an inequitable cost-sharing. It was precisely this possibility that the Legislature had in mind in enacting AB1X. For this reason, the standstill concept inherent in AB1X compels a prohibition on contractual terms that would prospectively shift cost burdens. A prospective suspension of direct access furthers a legitimate state interest in recovering costs expended to deal with an emergency of

extraordinary proportion and, as such, does not unlawfully impair the right of contract.

III. Implementation of the Suspension of Direct Access

In D.01-09-060 we said:

> "Accordingly, we issue this interim order in which we suspend the right to enter into new contracts or agreements for direct access effective today. This decision prohibits the execution of any new contracts for direct access service, or the entering into, or verification of, any new arrangements for direct access service pursuant to Public Utilities Code Sections 366 or 366.5, after the effective date of this order. [Footnote omitted.]. . .
>
> We direct the utilities not to accept any direct access service requests (DASRs) for any contracts executed or agreements entered into after the effective date of this decision. Steps that the utilities might take to ensure compliance with this order may include obtaining from each energy service provider a list of relevant identifying information for those customers that have entered into timely contracts, but for whom DASRs have not been submitted."

And we emphasized in Ordering Paragraph Number 8:

> "8. Within 14 days of the effective date of this order, PG&E, SDG&E and SCE, by letter, shall inform the Director of the Energy Division of the steps they have taken to ensure that no direct access service requests are accepted for any contracts executed or agreements entered into after September 20, 2001." (D.01-09-060 at p. 12.)

In D.01-09-060, we recognized that our order to suspend direct access was not self-executing and would have to be implemented by procedures to be

developed by the utilities. On November 7, 2001, at a prehearing conference called to discuss implementation, the presiding ALJ requested the utilities to propose implementation measures. Their joint proposal was filed November 16, 2001, comments on the proposal were filed November 28, 2001,[8] and reply comments were filed December 4, 2001.

The method by which a UDC is notified that one of its customers desires to be served by an ESP or desires to return to UDC bundled service is when the ESP (usually) or the customer (rarely) files a DASR with the serving utility. Similarly, a DASR is required to inform the utility that a contract has been assigned, or renegotiated, or terminated or extended, or has had additional locations incorporated. Merely suspending direct access on a date certain does not, by itself, notify interested parties how their contracts will be affected.

As mentioned above CMTA/CLECA proposed that the Commission grandfather those customers or their accounts who had signed direct access contracts as of September 20, 2001 and whose names appear on the UDC's direct access DASR lists of October 5. Sempra Energy Solutions supports this proposal as administratively simple, consistent with rules and tariffs in place September 20, 2001, and legally defensible. PG&E argues against one aspect of the proposal stating that direct access customers should not be allowed to enter into new contracts without restriction, as this would be a complete reversal of the direct access suspension in D.01-09-060. Similarly, SCE argues that customers should

[8] Comments from the following parties were filed: Alliance for Retail Energy Markets (AReM), Target Corporation, Laguna Irrigation District and ACWA-USA (LID), the University of California and California State University (UC/CSU), CMTA, Sempra Energy Solutions, City of Cerritos, and PowerSource.

not be allowed to switch to a new ESP or have their contracts assigned to new ESPs.

Generally, we favor a balanced approach which allows existing direct access customers to continue in the direct access market, but limits additional load moving to direct access to load changes associated with normal usage variations on direct access accounts in effect as of September 20, 2001. This standstill concept is consistent with the provisions of AB 1X and D.01-09-060 that direct access be suspended and there be no new arrangements. We note that direct access surcharges or exit fees or costs to bundled customers would increase if a standstill approach is not adopted, but instead unlimited expansion of load is permitted.

Under the standstill approach described below, we will permit assignments and renewals, but not add-ons of new load. This approach is consistent with our policy reasons for imposing direct access surcharges or exits fees, in lieu of an earlier suspension date, as an appropriate way to alleviate the significant cost-shifting of DWR costs on to bundled service customers.

The utilities shall implement the suspension as set forth below.

1. **ESPs shall have provided by October 5, 2001 a list of names of all customers with direct access contracts in place as of September 20, 2001.**

At the October 2, 2001 workshop, ESPs (including several AReM members) agreed that the October 5 date was reasonable for ESPs to submit names of eligible direct access customers, but that a longer period, until November 1, would be necessary to submit account specific details. Establishing a list of eligible customers within a reasonable time was suggested as an implementation step by the Commission in D.01-09-060. The October 5 date for customer names,

and the November 1 date for account specific details are fair – they are based on what ESPs said they could meet, and each utility notified ESPs in advance in writing that failure to submit names and account specific details as of the deadlines would lead to later DASR rejection. The October 5 and November 1 dates do not require that the utility processed the DASR by those dates.

AReM proposes that an independent third party, such as a CPA, would submit a DASR verification to the UDC only for customers who were not on the October 5th and November 1st lists (but had a valid direct access contract) and for additional sites for customers already on the lists. In turn, the UDC would be required, upon receipt of this verification, to process the associated DASR without delay in accordance with the standard procedures. A UDC would have no ability to delay the processing of a verified DASR.

In the UDCs' view it is simply not credible that any ESP's systems and records are so inadequate that a complete list of those customers who contracted for service prior to September 20, 2001 could not be provided in a timely manner. However, human error is possible. We will allow additions to the October 5th and November 1st lists[9] for customers with a valid direct access contract as of September 20, 2001 (but not for additional meters, accounts or sites), using the

[9] According to the Joint Proposal of the Utilities to Implement the Commission's Suspension of Direct Access, filed November 16, 2001 in this proceeding, PG&E and SDG&E each requested that its ESPs submit customer specific account information by November 1, 2001 for each customer name submitted on October 5. If SCE does not have such a list, it should develop the equivalent of such a list in order to implement the provisions of this order.

AReM process, along with an affidavit signed by both the ESP and the customer stating under penalty of perjury that the contract date is correct.

> **2. To submit an ESP list, or to submit DASRs for its accounts, an ESP must (1) have in effect a valid ESP/UDC service agreement as of September 20, 2001, and (2) ESPs serving small customers must have in effect as of September 20, 2001 valid Commission registration as required by law.**

The need for valid service agreements and registration is not disputed.

> **3. Master agreements between ESPs and certain entities (other than the customers or end users of record) whose terms and conditions allow specific customers to elect direct access in the future (through execution of individual implementing agreements with customers), entered into on or before September 20, 2001 do not qualify as agreements for direct access service with end use customers.**

LID/ACWA object strenuously to this rule. LID/ACWA argues for the eligibility of a master agreement executed September 5, 2001 between LID and ACWA-USA (an association of water agencies), under which ACWA-USA members can elect direct access service with LID acting as the ESP. Each member must execute a further participation agreement before taking service under the terms of the master agreement.

Water Code § 80110 provides that "the right of retail end use customers . . . shall be suspended. . . ." The utilities argue that master agreements between ESPs and associations to provide service at the election of member retail end users do not meet the requirements of the statute since such agreements are not with the retail end users. We agree. A master agreement with an association is nothing more than a proposal to provide service to retail end users and is not a

valid contract with any end user until the proposal is presented to the end user, and the end user accepts the offer by signing a participation agreement (required under the master agreement.) Any election by a member of an association to acquire direct access service under the master agreement after September 20, 2001, is therefore prohibited.

4. Customers and accounts are allowed to switch from one ESP to another after September 20, 2001.

According to AReM allowing customers unlimited switching between ESPs is consistent with AB 1X since it doesn't increase direct access load. We agree with AreM. Changing ESPs would not be inappropriate under the standstill policy because no change in direct access load would occur, thus there would be no impact on cost-shifting of DWR costs. While changing ESPs does require a new contract (absent assignment), prohibited by D.01-09-060 (Ordering Paragraph 7), an exception is appropriate for the reasons stated above. AB 1X can be read to allow ESP switches, and thus this exception, because it requires the suspension of the right to "acquire" direct access. A switch of ESPs is not an acquisition of direct access, but a continuation on direct access for the customer. See Water Code §80110. Customers can also choose a new ESP and continue on direct access if they returned to bundled service after September 20, 2001.

5. No customer is allowed to add a new location to its direct access service after September 20, 2001.

Consistent with the principle of attaining a standstill of direct access service, adding new locations (and thus new load) to direct access service should be prohibited. As discussed above, even if new locations are permitted under a direct access contract, a suspension as of September 20, 2001, is reasonable and appropriate to balance important regulatory goals.

6. No customer is allowed to add a new or additional account to direct access service if that account involves installation of additional meters after September 20, 2001 or would require a new DASR to be submitted after September 20, 2001.

Again, new or additional accounts or meters would violate the standstill principle by adding new load, and a prospective suspension is appropriate. In D.01-10-036, the Commission reaffirmed "unless the Commission states otherwise in a subsequent decision" that utilities must process DASRs relating to pre-September 20, 2001 direct access contracts or agreements. Rules 5 and 6 constitute such statement. However, new DASRs shall be processed by the utilities if necessary to implement another provision herein (e.g., assignment, new customer name).

Rule should not be construed to prevent, after September 20, 2001, the installation of meters or meter-reading equipment as necessary to initiate direct access service for eligible customers, or the replacement or upgrade of existing meters for existing direct access customers. But again: no customer shall be allowed to add any new account that is not on the October 5th or November 1st lists reference above.

7. Direct access residential and small commercial customers may move from one address to another within the UDC service area and continue to be served by the ESP serving them prior to the move.

No party objects to this condition.

8. Direct access contracts may be assigned after September 20, 2001, to either a new ESP, or to a new retail end use customer representing approximately the same load at the same location.

The direct access contracts which we have reviewed have clauses which permit assignment to another ESP or to another retail end use customer. AReM, and others, argue that if the contract permits assignment it must be honored even if the assignment takes place after the suspension date. We will allow assignment of contracts if permitted by the customer-ESP contract because this is consistent with the standstill principle and does not increase direct access load. Ordering Paragraph 7 of D.01-09-060 states:

> "PG&E, SCE, and SDG&E shall not accept any direct access service requests for any contracts executed or agreements entered into after September 20, 2001." (D.01-09-060 at p. 12.).

However, as noted above, D.01-10-036 required new DASRs to be processed by the utilities.

Unlike a customer switching from one ESP to another, assignment of a customer from one ESP to another involves a continuation of an existing contract, not a new arrangement or agreement. Therefore, assignment is permitted as allowed by customer-ESP contracts. However, we have already stated that no new locations or additional meters may be added; switching ESPs or customers on a contract does not provide an exception to this provision. Assignment to a new customer is limited to the same load at the same location.

9. A customer who had direct access prior to September 20, 2001, but who became a bundled customer before September 20, 2001 cannot return to direct access after September 20, 2001.

This would require a new contract after September 20, 2001, which is prohibited by D.01-09-060. No exception is warranted here.

10. A direct access customer can change its identity (i.e., Jones Company to Acme Electronics) provided no other implementation restriction applies.

A change in identity, such as a change in ownership or corporate reorganization, is permitted subject to the other restrictions delineated herein. For example, a change in identity may not be used to increase load or locations served.

11. Community Choice Aggregation Programs

Community aggregators shall serve only direct access customers who chose community aggregation prior to September 20, 2001.

Under the Public Utilities Code Section 366(b), community aggregation programs require an "opt-in" by the interested customers. The UDCs believe that the act of opting in after the suspension date constitutes a new arrangement for direct access service prohibited by D.01-09-060, and propose that customers who attempt to opt into a community aggregation program after the suspension date be rejected.

Community aggregators such as the Cities of Cerritos and San Marcos claim that because they had an existing community aggregation program prior to the suspension date, customers should be able to opt-in to direct access service even after the suspension date. Municipalities that are community aggregators assert that because the potential amount of load is small and because they have the legal authority to provide electric service to their inhabitants, they should have the right to switch their inhabitants to direct access after the suspension date.

We disagree. A customer who requests direct access service after September 20, is seeking a new arrangement prohibited by D.01-09-060. Whether the request is made to a community aggregator or directly to an ESP the result is the same: a shift of costs to the remaining bundled customers. The community aggregation program has been in effect since 1997. A community aggregator is part of direct access and should not be permitted to acquire new customers after September 20.

12. Returns to Bundled Service and Backbilling

The rules above may require some customers to move from direct access service to bundled service, specifically:

a) customers or accounts not on an ESP direct access customers list as of October 5, 2001, or account specific list of November 1, 2001.

b) customers or accounts added to direct access service after September 20, 2001 based on contracts signed after that date.

c) customers or accounts added to a master agreement or community aggregation program after September 20, 2001.

(d) new locations, or loads involving installation of additional meters, added after September 20, 2001 under contracts in place as of September 20, 2001 (except as delineated in Rule 6).

In these cases, the customer should not be backbilled by the utility for bundled service not taken by the customer.

IV. Comments on Draft Decision and Alternate

The Draft Decision (DD) of ALJ Barnett was mailed on January 25, 2002. The Alternate Draft Decision (ADD) of Commissioner Geoffrey Brown was mailed on February 7, 2002. Comments on both the DD and ADD were received on February 14, 2002. Comments were filed by Laguna Irrigation District, Powersource Corporation, Association of California Water Agencies, Cargill, Incorporated, Jack-In-The-Box, UC/CSU, The Community College League of California, The Building Owners and Managers Association, Irvine Company, California Industrial Users, Leprino Foods Company, Callaway Golf company, Kroger Company, City of Cerritos, California Manufacturers & Technology Association, Agricultural Energy Consumers Association, Newark Group, Inc., AES New Energy, Inc., AReM and Western Power Trading Forum, California Independent Petroleum Association, Commonwealth Energy Corporation, ORA, City of San Marcos, California Retailers Association, Energy Producers and Users Coalition, SBC Services, Inc, County Sanitation Districts of Los Angeles County, Sempra Energy Solutions, PG&E, California Energy Commission, DWR, SDG&E, Lowe's Home Improvement Warehouse, City of Corona, Simpson Timber Company, Los Angeles Unified School District, 7-Eleven and Wal-Mart, SCE, Strategic Energy, L.L.C., TURN, Sutter Health, California Large Energy Consumers, Department of Navy, Enron Energy Service, Inc. & Enron Energy Markets Corp., American Yeast Corporation, California Small Business Roundtable and California Small Business Association, and Applied Materials.[10]

[10] We note that some of the comments were accompanied by motions to intervene. Because there would not be any undue prejudice, we grant these motions, and permit the filing of these comments from these intervenors.

In issuing today's decision, we make certain changes in response to the comments. As ORA, PG&E and TURN point out, the ADD must explicitly determine that a direct access surcharge or exit fee will be adopted and levied on direct access customers in order to ensure an equitable outcome for all customers. We agree and will modify accordingly. We have also added clarifying language concerning backbilling as suggested by PG&E. . In response to CMTA's comments, we have added language in the conclusions of law concerning assignment and renewals. We agree with Strategic Energy that some very limited exceptions to the October 5, 2001 ESP customer list should be allowed, if errors occurred.

SCE states in its comments that "SCE interprets the [alternate's] directive that direct access load as of September 20, 2001, not increase to mean that only direct access customers receiving power from their ESP as of September 20, 2001, shall be allowed to remain on direct access service and that all direct access switches after September 20, 2001 – which would necessarily increase direct access load – are prohibited." (SCE's Comments, dated February 14, 2002, p. 8, emphasis in the original.) SCE continues: "Therefore if the [alternate] is adopted, SCE will revert all direct access customer service accounts which were not receiving power from their ESPs as of September 20, 2001 back to bundled service." (SCE's Comments, dated February 14, 2002, p. 8, emphasis in the original.) In response to this comment, we note that it was not our intent to cause such a result. Thus, we make it clear in today's decision that the utilities shall not return direct access customers to bundled service based upon when power flowed from an ESP to a customer, nor upon whether the utility processed a DASR by any particular date. As discussed herein, utilities must accept for direct access service and various service changes discussed herein any DASR

based upon the ESPs' October 5, 2001 customer list, and honor the exception process as discussed. We accept SCE's suggestions regarding certain clarifications to the ordering paragraphs.

To ensure clarity, we will emphasize here that all direct access customers with valid contracts signed on or before September 20, 2001 may remain direct access customers, regardless of whether they were receiving power from their ESP as of September 20, 2001 (subject to the other restrictions in this decision). Our intentions in ensuring that the level of direct access load not increase are based upon the level of load under contract as of September 20, 2001.

Other clarifications and deletions are made for consistency purposes.

V. Rehearing and Judicial Review

This decision construes, applies, implements, and interprets the provisions of AB 1X. Therefore, Public Utilities Code Section 1731(c) (applications for rehearing are due within 10 days after the date of issuance of the order or decision) and Public Utilities Code Section 1768 (procedures for judicial review) are applicable. (See Stats. 2001 (1st Extraordinary Sess.), ch. 9, §§ 1 & 2, pp. 79-80.)

Findings of Fact

1. On November 5, 2001, DWR has submitted to us, pursuant to its authority under Water Code § 80110, a revenue requirement of $$10,003,461,000 billion for the three major California utilities, covering the period January 2001 through December 2002.

2. DWR's revenue requirement was adjusted on February 21, 2002 to $9,045,462,000.

3. There would be a significant magnitude of cost-shifting if DWR costs are borne solely by bundled service customers, and direct access customers are not required to pay a portionof these costs that were incurred by DWR on behalf of

all retail end use customers in the service territories of the three utilities during a time when California was faced with an energy crisis.

4. It is reasonable to prevent this costshifting by imposing a direct access surcharge or exit fee, rather than adopting an earlier suspension.

5. Consumers, regulated utilities and the economy as a whole benefit when the Commission maintains a regular and consistent regulatory program, which affords the predictability necessary to plan investment and budgetary decisions.

6. California is better served by maintaining the September 20, 2001 direct access suspension date and by imposing a direct access surcharge or exit fee, in lieu of an earlier suspension, to recover DWR costs from direct access customers.

7. The issues concerning direct access surcharges or exits are matters to be considered in A.00-11-038, et al., and such surcharges or exit fees will be developed in that proceeding.

8. Certain direct access contracts include assignment, renewal, and load expansion provisions..

9. A direct access customer who returns to bundled service should not be billed by the utility for bundled service he did not use..

10. Allowing a current direct access customer to choose a new ESP, renew a contract with an ESP, or be assigned to a new ESP will not increase overall direct access load or result in cost-shifting.

11. Certain community choice aggregation programs have signed up direct access customers before September 20, 2001 .

12. It is reasonable to interpret a September 20, 2001 date for suspension of direct access to mean that the level of direct access load as of that date (irrespective of whether power had yet flowed under any direct access contract) should not be allowed to increase, apart from normal load fluctuations.

13. D.01-09-060 should be clarified so that new contracts are allowed if a direct access customer switches ESPs.

14. It is reasonable to allow assignment or renewal of a direct access contract, if the assignment or renewal is permitted in the contract, and if does not constitute a new contract or arrangement.

15. Customers who signed a direct access contract as of September 20, 2001 may renew the contract, enter into a new contract with a different ESP for the same load, or may switch ESPs via assignment or other permissible mechanism. The filing of new DASRs to implement such changes is permissible.

16. Addition of any new or additional account that involves installation of an additional meter or requires a new DASR after September 20, 2001 constitute a new direct access contract or arrangement and is not allowed, except to initiate service or to replace or upgrade an existing meter.

17. Community choice aggregation programs should not be allowed to serve direct access customers who signed up after September 20, 2001.

Conclusions of Law

1. Direct access is a legislative and regulatory right, subject to the suspension provisions of AB 1X.

2. In implementing AB 1X, the Commission in D.01-09-060 suspended the right to enter into direct access contracts or arrangements after September 20, 2001.

3. In lieu of adopting an earlier suspension date, the Commission can impose direct access surcharges or exit fees on on direct access customers as a way to equitably allocate DWR costs among bundled and direct access customers.

4. The implementation provisions set forth in this decision are reasonable and consistent with our determinations in D.01-09-060 that suspended the right to enter into direct access contracts or arrangements as of September 20, 2001.

5. This decision is made effective today to allow the suspension provisions to be implemented expeditiously. Thus, it is reasonable to reduce the period for comment and review of the draft decision, pursuant to Rule 77.7(f)(9).

O R D E R

IT IS ORDERED that:

1. This order shall apply to Southern California Edison Company (SCE). Pacific Gas and Electric Company (PG&E), and San Diego Gas & Electric Company (SDG&E).

2. The execution of any new contracts, or the entering into, or the verification of any new arrangements for direct access service pursuant to Public Utilities Code Sections 366 or 366.5, after September 20, 2001, is prohibited, unless specifically allowed on this decision.

3. Direct access surcharges or exit fees shall be developed in A.00-11-038, et. al. so that there is an equitable allocation of the DWR costs, so that direct access customers pay their fair share of DWR costs.

4. SCE, PG&E, and SDG&E shall implement the conditions set forth in this decision which affect those direct access contracts not suspended.

5. SCE, PG&E, and SDG&E shall not accept any direct access service requests for any contracts executed or agreements entered into after September 20, 2001, unless specifically allowed by this decision.

6. If not already done, SCE, PG&E, and SDG&E shall notify their customers that the right of retail end users to acquire direct access service is suspended effective September 20, 2001.

7. If not already done, SCE, PG&E, and SDG&E shall modify any information disseminated to customers that describes direct access service, subject to review by the Public Advisor's office and Energy Division, to explain that the right to acquire direct access service has been suspended.

8. The highlighted sections under "Implementation of the Suspension of Direct Access" are adopted.

9. Within 14 days of the effective date of this order, SCE, PG&E, and SDG&E by letter, shall inform the Director of the Energy Division of the steps they have taken to ensure that no direct access service requests are accepted for any contracts executed or agreements entered into after September 20, 2001.

10. SCE, PG&E, and SDG&E shall within 90 days after the effective date of this order, return any direct access customers not in conformity with this order to bundled service.

11. This Rulemaking is closed.

This order is effective today.

Dated _____, at San Francisco, California.

DRAFT

Appendix A

Table 1

DWR Revenue Requirement

For the Period January 17, 2001 through December 31, 2002

($000s)

Quarter	Retail Sales (GWhs)	A&G	Other	DSM	Contract Power	Residual Net Short	Ancillary Services	Total Commitments	(Lag) Lead Accrual to Cash	Total Operating Expenditures	Financing Cost	Total Expenditures	Revenue Lead (Lag)	Spot Sales Revenue	Estimated Quarterly Fund Balance	Total DWR Revenues Needed	Net Borrowed Proceeds	Customer Revenue Requirement
		A	B	C	D	E	F	G (Sum of A thru F)	H	I (= G + H)	J	K (= I + J)	L	M	N	O (=K – L – M + N)	P	Q (=O – P)
Q1, 2001	12,360	7,848	-	-	-	3,581,465	367,847	3,957,160	(1,619,382)	2,337,778	-	2,337,778	(544,097)	-	293,176	3,175,051	2,400,000	775,051
Q2, 2001	19,620	10,162	-	482	627,601	3,884,229	419,215	4,941,690	6,302	4,947,991	-	4,947,991	(1,030,866)	-	4,239,624	9,925,305	7,908,729	2,016,576
Q3, 2001	16,054	11,346	3,734	226,446	888,404	1,135,727	57,667	2,323,324	(55,479)	2,267,845	(10,481)	2,257,364	(329,133)	-	3,182,822	1,529,696	(116,300)	1,645,996
Q4, 2001	10,365	8,998	4,008	61,968	670,470	248,590	43,889	1,037,923	550,427	1,588,350	-	1,588,350	223,483	20,884	2,963,069	1,124,230	-	1,124,230
Q1, 2002	9,313	15,104	3,667	-	652,644	169,756	51,551	892,722	1,543,844	2,436,567	(45,976)	2,390,591	879,565	24,819	2,499,879	1,023,017	-	1,023,017
Q2, 2002	7,957	15,104	3,211	-	665,651	129,830	42,678	856,474	(19,771)	836,703	471,932	1,308,635	20,355	39,279	2,128,890	878,012	-	878,012
Q3, 2002	12,312	15,104	4,895	-	946,735	220,184	64,080	1,250,998	(25,251)	1,225,748	400,807	1,626,555	(257,440)	45,879	1,643,471	1,352,697	-	1,352,697
Q4, 2002	10,812	15,104	4,249	-	832,758	164,417	54,752	1,071,280	20,493	1,091,773	464,959	1,556,732	194,995	26,043	1,495,658	1,187,882	-	1,187,882
Total	98,793	98,771	23,764	288,896	5,284,264	9,534,199	1,101,678	16,331,571	401,184	16,732,755	1,281,242	18,013,997	(843,139)	156,903		20,195,890	10,192,429	10,003,461

Notes

1. **Total Commitments** equals sum of **A&G**, **Other (Uncollectables)**, **DSM**, **Contract Power**, **Residual Net Short**, and **Ancillary Services**
2. **Total Operating Expenditures** equals **Total Commitments** plus **(Lag) Lead Accrual to Cash**
3. **Total Expenditures** equals **Total Operating Expenditures** plus **Financing Cost**
4. **Total DWR Revenues Needed** equals **Total Expenditures** minus **Revenue Lead (Lag)**, minus **Spot Sales Revenue**, plus **Estimated Quarterly Fund Balance**
5. **Customer Revenue Requirement** equals **Total DWR Revenues Needed** minus **Net Borrowed Proceeds**

(END OF APPENDIX A)

Appendix B
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Water Code Sections

80000. The Legislature hereby finds and declares all of the following:

(a) The furnishing of reliable reasonably priced electric service is essential for the safety, health, and well-being of the people of California. A number of factors have resulted in a rapid, unforeseen shortage of electric power and energy available in the state and rapid and substantial increases in wholesale energy costs and retail energy rates, with statewide impact, to such a degree that it constitutes an immediate peril to the health, safety, life and property of the inhabitants of the state, and the public interest, welfare, convenience and necessity require the state to participate in markets for the purchase and sale of power and energy.

(b) In order for the department to adequately and expeditiously undertake and administer the critical responsibilities established in this division, it must be able to obtain, in a timely manner, additional and sufficient personnel with the requisite expertise and experience in energy marketing, energy scheduling, and accounting.

80002.5. It is the intent of the Legislature that power acquired by the department under this division shall be sold to all retail end use customers being served by electrical corporations, and may be sold, to the extent practicable, as determined by the department, to those local publicly owned electric utilities requesting such power. Power sold by the department to retail end use customers shall be allocated pro rata among all classes of customers to the extent practicable.

80104. Upon the delivery of power to them, the retail end use customers shall be deemed to have purchased that power from the department. Payment for any sale shall be a direct obligation of the retail end use customer to the department.

80108. The commission may issue rules regulating the enforcement of the agency function pursuant this division, including collection and payment to the department.

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80110. The department shall retain title to all power sold by it to the retail end use customers. The department shall be entitled to recover, as a revenue requirement, amounts and at the times necessary to enable it to comply with Section 80134, and shall advise the commission as the department determines to be appropriate. Such revenue requirements may also include any advances made to the department hereunder or hereafter for purposes of this division, or from the Department of **Water** Resources Electric Power Fund, and General Fund moneys expended by the department pursuant to the Governor's Emergency Proclamation dated January 17, 2001. For purposes of this division and except as otherwise provided in this section, the Public Utility Commission's authority as set forth in Section 451 of the Public Utilities **Code** shall apply, except any just and reasonable review under Section 451 shall be conducted and determined by the department. The commission may enter into an agreement with the department with respect to charges under Section 451 for purposes of this division, and that agreement shall have the force and effect of a financing order adopted in accordance with Article 5.5 (commencing with Section 840) of Chapter 4 of Part 1 of Division 1 of the Public Utilities **Code**, as determined by the commission. In no case shall the commission increase the electricity charges in effect on the date that the act that adds this section becomes effective for residential customers for existing baseline quantities or usage by those customers of up to 130 percent of existing baseline quantities, until such time as the department has recovered the costs of power it has procured for the electrical corporation's retail end use customers as provided in this division. After the passage of such period of time after the effective date of this section as shall be determined by the commission, the right of retail end use customers pursuant to Article 6 (commencing with Section 360) of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities **Code** to acquire service from other providers shall be suspended until the department no longer supplies power hereunder. The department shall have the same rights with respect to the payment by retail end use customers for power sold by the department as do providers of power to such customers.

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80130. The department may incur indebtedness and issue bonds as evidence thereof, provided that bonds may not be issued in an amount the debt service on which, to the extent payable from the fund, is estimated by the department to exceed the amounts estimated to be available in the fund for their payment. The department may authorize the issuance of bonds (excluding notes issued in anticipation of the issuance of bonds and retired from the proceeds of those bonds) in an aggregate amount up to the greater of thirteen billion four hundred twenty-three million dollars ($13,423,000,000) or the amount calculated by multiplying by a factor of four the annual revenues generated by the California Procurement Adjustment, as determined by the commission pursuant to Section 360.5 of the Public Utilities **Code**; provided, such aggregate amount shall not exceed thirteen billion four hundred twenty-three million dollars ($13,423,000,000). Nothing in this section shall prohibit the department from issuing bonds prior to the effective date of this bill based upon the authorization granted to the department by the provisions of Chapter 4 of the Statutes of 2001-02 First Extraordinary Session. Refunding of bonds to obtain a lower interest rate shall not be included in the calculation of the aggregate amount. In addition, before the issuance of bonds in a public offering, the department shall establish a mechanism to ensure that the bonds will be sold at investment grade ratings and repaid on a timely basis from pledged revenues. This mechanism may include, but is not limited to, an agreement between the department and the commission as described in Section 80110.

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80134. (a) The department shall, and in any obligation entered into pursuant to this division may covenant to, at least annually, and more frequently as required, establish and revise revenue requirements sufficient, together with any moneys on deposit in the fund, to provide all of the following:

(1) The amounts necessary to pay the principal of and premium, if any, and interest on all bonds as and when the same shall become due.

(2) The amounts necessary to pay for power purchased by it and to deliver it to purchasers, including the cost of electric power and transmission, scheduling, and other related expenses incurred by the department, or to make payments under any other contracts, agreements, or obligations entered into by it pursuant hereto, in the amounts and at the times the same shall become due.

(3) Reserves in such amount as may be determined by the department from time to time to be necessary or desirable.

(4) The pooled money investment rate on funds advanced for electric power purchases prior to the receipt of payment for those purchases by the purchasing entity.

(5) Repayment to the General Fund of appropriations made to the fund pursuant hereto or hereafter for purposes of this division, appropriations made to the Department of **Water** Resources Electric Power Fund, and General Fund moneys expended by the department pursuant to the Governor's Emergency Proclamation dated January 17, 2001.

(6) The administrative costs of the department incurred in administering this division.

(b) The department shall notify the commission of its revenue requirement pursuant to Section 80110.

(END OF APPENDIX B)

Appendix C

Appearance

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(END OF APPENDIX C)